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8 File No. 09-03784

6 Attorneys for Secured Creditor,  
BANK OF AMERICA, NA, SUCCESSOR BY MERGER WITH COUNTRYWIDE BANK,  
NA, FKA TREASURY BANK

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA**

## **SAN JOSE DIVISION**

11 In re:  
12 BENYAM MULUGETA and PAULA R.  
13 MULUGETA *dba* MULUGETA  
14 DEVELOPMENT,  
Debtors.

Case No.: 09-51900 AW  
Chapter 11

## Hearing —

Date: May 23, 2013

Time: 2:00 P.M.

Place: U.S. BANKRUPTCY COURT  
280 South First Street  
San Jose, CA 95113  
Courtroom 3020

**SECURED CREDITOR'S LIMITED OBJECTIONS TO APPROVAL OF DEBTOR'S  
AMENDED COMBINED DISCLOSURE STATEMENT AND PLAN**

18 COMES NOW, BANK OF AMERICA, NA, SUCCESSOR BY MERGER WITH  
19 COUNTRYWIDE BANK, NA, FKA TREASURY BANK, a Secured Creditor and in the above-  
20 entitled Bankruptcy proceeding and a Class 1aa creditor (“Objecting Secured Creditor”) pursuant  
21 to the Debtors’ Amended Combined Disclosure Statement (“Disclosure Statement”) and Plan  
22 (“Plan”) filed on April 17, 2013 as docket entry no. 778 and submits the following Objections to  
23 approval of the Amended Combined Disclosure Statement and Plan based on the following:  
24 ///

1 Secured Creditor filed a Proof of Claim on April 23, 2009 as Claim #14, setting forth a  
2 total secured claim in the amount of \$361,877.41 with arrears of \$14,965.70. In accordance with  
3 F.R. Bankr. P. 4001(f) the claim is *prima facie* evidence of the claim. The Debtors have not  
4 maintained post-petition payments on the secured claim and the Class 1aa Secured Creditor has  
5 been required to make post-petition advances for insurance. Secured Creditor obtained an order  
6 approving a stipulation for relief from stay as to its collateral in January of 2012. Secured  
7 Creditor has not foreclosed.

8 The description of the Class 1aa treatment in the Plan is as follows:

9 **Class 1aa – Ocwen Loan Servicing:** Surrender of Brann is without prejudice to  
10 Debtors' attempt to negotiate a "short sale." The confirmation order will  
11 constitute an order for relief from stay. Any secured claim is satisfied in full  
12 through surrender of the collateral. Any deficiency claim is a general unsecured  
claim treated in Part 2. Creditors in these classes shall retain their interest in the  
collateral. These secured claims are not impaired and are not entitled to vote on  
confirmation of the Plan.

13 The treatment proposed in Class 1aa is not objectionable if limited to surrender and relief,  
14 but Secured Creditor objects to the ambiguity that is introduced by the open-ended reservation of  
15 rights to pursue short sale negotiations. Debtors cannot force a short sale on Secured Creditor.  
16 Any short sale proposed must be approved by Secured Creditor and the right to continue to seek  
17 a voluntary loan modification must be cut-off at some point in time if the Debtors prove  
18 ineligible for such relief.

19 WHEREFORE, Secured Creditor prays as follows:

20 (1) That the Court should not approve the disclosure statement unless amended so as to  
21 confirm that no short sale can be forced on the Class 1aa claimant and to include a provision that  
22 the Class 1aa Secured Creditor will continue to be free to exercise its remedies should the  
23 Debtors not qualify for a voluntary loan modification;

1 (2) That the Debtor be directed to file and serve an amended disclosure statement to  
2 address the defects with the documents in their present form;  
3 (3) For such other relief as this Court deems proper.

4 MILES, BAUER, BERGSTROM & WINTERS, LLP

5 Dated: May 9, 2013 By: /s/ Mark T. Domeyer  
6 Richard J. Bauer, Jr., Esq.  
7 Mark T. Domeyer, Esq.  
L. Bryant Jaquez, Esq.  
Attorney for Secured Creditor

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